

AMENDED IN SENATE JUNE 25, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1724

**Introduced by Committee on Agriculture (Matthews (Chair),
Maldonado (Vice Chair), Berg, Cogdill, Maze, Oropeza, Parra,
Reyes, Salinas, and Vargas)**

March 3, 2003

An act to amend Section 8617 of the Business and Professions Code, and to amend Sections 11732, ~~12999.4~~, and 13000 of the Food and Agricultural Code, relating to pesticides.

LEGISLATIVE COUNSEL'S DIGEST

AB 1724, as amended, Committee on Agriculture. Pesticides.

(1) *Existing law authorizes the Structural Pest Control Board, or county agricultural commissioners when acting as representatives of the Director of Pesticide Regulation to suspend a structural pest control operator's license or impose specified monetary civil penalties for violations of the laws relating to structural pest control.*

This bill would include violations of specified provisions relating to structural fumigation in the above provision.

(2) Under existing law, it is unlawful for any person to engage for hire in the business of pest control in any county unless the person has registered for the then current calendar year with the county agricultural commissioner.

This bill would make it unlawful for any person to advertise, solicit, or operate as a pest control business unless the person is registered with the commissioner for the current calendar year. The bill would make other technical, nonsubstantive changes.

~~(2) Under existing law, in lieu of civil prosecution by the Director of Pesticide Regulation, the director may levy a civil penalty against a person violating various provisions or regulations of not more than \$5,000.~~

~~This bill would, in addition, authorize the director to levy a civil penalty against any person who possesses or uses any pesticide that is not registered pursuant to specified provisions, or for which registration has been suspended.~~

(3) Existing law requires that any action brought for various violations of provisions and regulations regarding pesticides be commenced by *the* director, the commissioner, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, within 2 years of the occurrence of the violation, except as specified. However, under existing law, when an investigation is completed and submitted to the director, the action is required to be commenced within one year of that submission.

This bill would require that when a commissioner submits a completed investigation to the director for action by the director or the Attorney General, the action shall be commenced within one year of that submission. The bill would provide that this provision does not preclude the director from returning the investigation to the commissioner for action to be commenced by the commissioner, the district attorney, the city prosecutor, or the city attorney, to be commenced within 2 years of the occurrence of the violation. The bill would also require that an action brought by the director against any person who possesses or uses any pesticide that is not registered pursuant to specified provisions, or for which registration has been suspended, shall commence within 4 years of the occurrence of the violation.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 8617 of the Business and Professions*
2 *Code is amended to read:*

3 8617. (a) The board or county agricultural commissioners,
4 when acting pursuant to Section 8616.4, may suspend the right of
5 a structural pest control licensee or registered company to work in
6 a county for up to three working days or, for a licensee, registered



1 company, or an unlicensed individual acting as a licensee, may
 2 levy an administrative fine up to one thousand dollars (\$1,000) or
 3 direct the licensee to attend and pass a board-approved course of
 4 instruction at a cost not to exceed the administrative fine, or both,
 5 for each violation of this chapter, *or Chapter 14.5*, or any
 6 regulations adopted pursuant to ~~this chapter~~ *these chapters*, or
 7 Chapter 2 (commencing with Section 12751), Chapter 3
 8 (commencing with Section 14001), Chapter 3.5 (commencing
 9 with Section 14101), or Chapter 7 (commencing with Section
 10 15201) of Division 7 of the Food and Agricultural Code, or any
 11 regulations adopted pursuant to those chapters, relating to
 12 pesticides. Fines collected shall be paid to the Education and
 13 Enforcement Account in the Structural Pest Control Education
 14 and Enforcement Fund. Suspension may include all or part of the
 15 registered company's business within the county based on the
 16 nature of the violation, but shall, whenever possible, be restricted
 17 to that portion of a registered company's business in a county that
 18 was in violation.

19 (b) A licensee who passes a course pursuant to this section shall
 20 not be awarded continuing education credit for that course.

21 (c) Before a suspension action is taken, a fine levied, or a
 22 licensee is required to attend and pass a board-approved course of
 23 instruction, the person charged with the violation shall be provided
 24 a written notice of the proposed action, including the nature of the
 25 violation, the amount of the proposed fine or suspension, or the
 26 requirement to attend and pass a board-approved course of
 27 instruction. The notice of proposed action shall inform the person
 28 charged with the violation that if he or she desires a hearing before
 29 the commissioner issuing the proposed action to contest the
 30 finding of a violation, that hearing shall be requested by written
 31 notice to the commissioner within 20 days of the date of issuance
 32 of the written notice of proposed action.

33 A notice of the proposed action that is sent by certified mail to
 34 the last known address of the person charged shall be considered
 35 received even if delivery is refused or the notice is not accepted at
 36 that address.

37 If a hearing is requested, notice of the time and place of the
 38 hearing shall be given at least 10 days before the date set for the
 39 hearing. At the hearing, the person shall be given an opportunity
 40 to review the commissioner's evidence and a right to present

1 evidence on his or her own behalf. If a hearing is not requested
2 within the prescribed time, the commissioner may take the action
3 proposed without a hearing.

4 (d) If the person upon whom the commissioner imposed a fine
5 or suspension or required attendance at a board-approved course
6 of instruction requested and appeared at a hearing before the
7 commissioner, the person may appeal the commissioner's decision
8 to the Disciplinary Review Committee and shall be subject to the
9 procedures in Section 8662.

10 (e) If a suspension or fine is ordered, it may not take effect until
11 20 days after the date of the commissioner's decision if no appeal
12 is filed. If an appeal pursuant to Section 8662 is filed, the
13 commissioner's order shall be stayed until 20 days after the
14 Disciplinary Review Committee has ruled on the appeal.

15 (f) Failure of a licensee or registered company to pay a fine
16 within 30 days of the date of assessment or to comply with the
17 order of suspension, unless the citation is being appealed, may
18 result in disciplinary action being taken by the board.

19 Where a citation containing a fine is issued to a licensee and it
20 is not contested or the time to appeal the citation has expired and
21 the fine is not paid, the full amount of the assessed fine shall be
22 added to the fee for renewal of that license. A license shall not be
23 renewed without payment of the renewal fee and fine.

24 Where a citation containing a fine is issued to a registered
25 company and it is not contested or the time to appeal the citation
26 has expired and the fine is not paid, the board shall not sell to the
27 registered company any inspection stamps, notice of completion
28 stamps, or pesticide use stamps until the assessed fine has been
29 paid.

30 Where a citation containing the requirement that a licensee
31 attend and pass a board-approved course of instruction is not
32 contested or the time to appeal the citation has expired and the
33 licensee has not attended and passed the required board-approved
34 course of instruction, the licensee's license shall not be renewed
35 without proof of attendance and passage of the required
36 board-approved course of instruction.

37 (g) Once final action pursuant to this section is taken, no other
38 administrative or civil action may be taken by any state
39 governmental agency for the same violation. However, action
40 taken pursuant to this section may be used by the board as evidence

1 of prior discipline, and multiple local actions may be the basis for
2 statewide disciplinary action by the board pursuant to Section
3 8620. A certified copy of the order of suspension or fine issued
4 pursuant to this section or Section 8662 shall constitute conclusive
5 evidence of the occurrence of the violation.

6 (h) Where the board is the party issuing the notice of proposed
7 action to suspend or impose a fine pursuant to subdivision (a) of
8 this section, “commissioner” as used in subdivisions (c), (d), and
9 (e) includes the board’s registrar.

10 *SEC. 2.* Section 11732 of the Food and Agricultural Code is
11 amended to read:

12 11732. It is unlawful for any person to advertise, solicit, or
13 operate as a pest control business in any county unless the person
14 has registered with the commissioner for the current calendar year.

15 The registration shall be in the form prescribed by the
16 commissioner and shall show all of the following information:

17 (a) Name and address of the registrant.

18 (b) Number and kind of units to be operated in the county.

19 (c) Type of pests ~~which~~ *that* are intended to be controlled.

20 (d) Any other information as the commissioner may require.

21 ~~SEC. 2.~~ ~~Section 12999.4 of the Food and Agricultural Code~~
22 ~~is amended to read:~~

23 ~~12999.4. (a) In lieu of civil prosecution by the director, the~~
24 ~~director may levy a civil penalty against a person violating~~
25 ~~Sections 12115, 12116, 12671, 12992, 12993, 12995, Chapter 10~~
26 ~~(commencing with Section 12400) of Division 6, Article 4.5~~
27 ~~(commencing with Section 12841), Chapter 7.5 (commencing~~
28 ~~with Section 15300), or the regulations adopted pursuant to those~~
29 ~~provisions, of not more than five thousand dollars (\$5,000) for~~
30 ~~each violation.~~

31 ~~(b) Before a civil penalty is levied, the person charged with the~~
32 ~~violation shall be given a written notice of the proposed action,~~
33 ~~including the nature of the violation and the amount of the~~
34 ~~proposed penalty, and shall have the right to request a hearing~~
35 ~~within 20 days after receiving notice of the proposed action. A~~
36 ~~notice of the proposed action that is sent by certified mail to the last~~
37 ~~known address of the person charged shall be considered received~~
38 ~~even if delivery is refused or the notice is not accepted at that~~
39 ~~address. If a hearing is requested, notice of the time and place of~~
40 ~~the hearing shall be given at least 10 days before the date set for~~

~~the hearing. Prior to the hearing, the person shall be given an opportunity to review the director's evidence. At the hearing, the person shall be given the opportunity to present evidence on his or her own behalf. If a hearing is not timely requested, the director may take the action proposed without a hearing.~~

~~(e) If the person against whom the director levied a civil penalty requested and appeared at a hearing, the person may seek review of the director's decision within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.~~

~~(d) After the exhaustion of the review procedure provided in this section, the director, or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.~~

~~(e) Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department, upon appropriation, in administering this division and Division 6 (commencing with Section 11401).~~

SEC. 3. Section 13000 of the Food and Agricultural Code is amended to read:

13000. (a) Except as provided in subdivisions (b) and (c), an action brought pursuant to this article shall be commenced by the director, the commissioner, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, within two years of the occurrence of the violation.

(b) When a commissioner submits a completed investigation to the director for action by the director or the Attorney General, the action shall be commenced within one year of that submission. However, nothing in this subdivision precludes the director from returning the investigation to the commissioner for action to be commenced by the commissioner, the district attorney, the city prosecutor, or the city attorney, as provided in subdivision (a).

(c) An action brought by the director to collect unpaid mill assessments and delinquent fees required by Article 4.5 (commencing with Section 12841) or an action brought by the

1 director to collect civil penalties pursuant to Section 12999.4 for
2 violations of Article 4.5 (commencing with Section 12841),
3 Section 12993, or Section 12995 shall be commenced within four
4 years of the occurrence of the violation.

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6 CORRECTIONS

7 **Digest — Page 1.**

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